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San Francisco County Superior Court

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CASE MANAGEMENT CONFERENCE SET

SEP 14 2007 - 9<sup>00</sup>AM

DEPARTMENT 212

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

DEVINE COMMUNICATIONS, INC., a California  
Corporation; MEGALINK TELECOM, INC., a  
California Corporation; and DOUGLAS SERGE  
DEVINE, an individual,

Defendants.

CASE NO. 0807-462325

COMPLAINT FOR  
INJUNCTION, CIVIL  
PENALTIES AND OTHER  
EQUITABLE RELIEF

Plaintiff the People of the State of California ("Plaintiff" or the "People"), by and through  
Edmund G. Brown Jr., Attorney General of the State of California, and the California Public  
Utilities Commission, alleges on information and belief:

**DEFENDANTS**

1. Defendant Devine Communications, Inc. ("Devine Comm.") is a California Corporation with its principal place of business at 2024 Divisadero Street, Suite 1, San Francisco, California 94115. Devine is in the business of marketing and distributing prepaid calling cards and prepaid calling services in California and nationwide, primarily to ethnic Filipino consumers.

2. Defendant Megalink Telecom, Inc. ("Megalink") is a California Corporation with its principal place of business listed with the Secretary of State as 5838 San Fernando Road, Unit B, Glendale, California 91202. Megalink is in the business of reselling telecommunications services to consumers in the form of prepaid calling cards and prepaid calling services.

3. Defendant Douglas Serge Devine ("Devine") is an individual who resides at 2024 Divisadero Street, Apartment 1, San Francisco, California 94115. Devine is the chief executive officer and principal owner of both Devine Comm. and Megalink. Devine directs, controls, and manages Devine Comm. and Megalink and has either directed or ratified the activities complained of herein.

4. Whenever reference is made in this complaint to any act of any corporate or other business defendant, such allegation shall mean that said defendant and its owners, officers, directors, agents, employees, or representatives did or authorized such acts while engaged in the management, direction, or control of the affairs of defendants and while acting within the scope and course of their duties.

5. Whenever reference is made in this complaint to any act of defendants, such allegation shall mean that each defendant acted individually and jointly with the other defendants named in that cause of action.

6. Whenever in this complaint reference is made to any act of any individual defendant, such allegation shall be deemed to mean that said defendant is and was acting (a) as a principal, (b) under express or implied agency, and/or (c) with actual or ostensible authority to perform the acts so alleged on behalf of every other defendant herein.

7. At all relevant times, each defendant knew or realized, or should have known or



1 service, called "Tawag Na Direct," enables users to make calls from their home telephones or  
2 other designated telephones by dialing a toll-free access number. Instead of the user separately  
3 dialing a PIN, the user's home phone number or other designated phone number functions as the  
4 user's PIN. When a call is placed, the service employs Automatic Number Identification  
5 ("ANI") technology to link the user's home phone or other designated phone to a prepaid calling  
6 account. Users can make calls from phones other than the one(s) automatically linked to their  
7 accounts by separately dialing an authorization code. Users pay a minimum of \$10 in advance  
8 to open an account and may recharge their accounts by purchasing additional credit in increments  
9 of \$10, \$25, \$50, or \$100.

10 13. Defendants own no telecommunications network facilities of their own.  
11 Defendants purchase calling time, either in bulk or on a usage-basis, from third-party providers,  
12 and resell that time to wholesalers and/or to consumers in the form of prepaid calling cards and  
13 prepaid calling services. Defendants advertise and market their products and services, and  
14 Defendants establish the per-minute rates charged to consumers for calls to various destinations,  
15 as well as the type and amount of all surcharges, fees, and other levies that will be imposed based  
16 on a consumer's usage pattern, and all other terms and conditions of service.

17  
18 **FIRST CAUSE OF ACTION**  
19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**  
20 **(UNFAIR COMPETITION)**  
(Brought by the Attorney General on behalf of The People of the State of California)

21  
22 14. Plaintiff, the People of the State of California, restates and incorporates  
23 paragraphs 1 through 13 as though fully set forth herein.

24 15. Defendants, and each of them, have engaged in, and are still engaging in, unfair  
25 competition within the meaning of Business and Professions Code section 17200, by:

26 A. Violating Public Utilities Code sections 885(a), 886, and 1013(b) by  
27 offering the services of telephone prepaid debit cards in California without being registered by  
28 the California Public Utilities Commission or possessing a certificate of public convenience and

1 necessity from the California Public Utilities Commission.

2 B. Violating Business and Professions Code section 17538.9, subdivisions  
3 (b)(2)(A) and (b)(3)(F), by failing to print legibly on their prepaid calling cards the name of the  
4 company providing the service.

5 C. Violating Business and Professions Code section 17538.9, subdivision  
6 (b)(3)(F) by failing to clearly and conspicuously disclose in a prominent area immediately  
7 proximate to the point of sale of their prepaid calling services the name of the company  
8 providing the service.

9 D. Violating Business and Professions Code section 17538.9, subdivision  
10 (b)(1), by advertising the price, rate, or unit value of prepaid calling cards or services without  
11 also disclosing all additional surcharges and/or fees applicable to the advertised price, rate, or  
12 unit value.

13 E. Violating Business and Professions Code section 17538.9, subdivision  
14 (b)(3)(A), by failing to print legibly on the card or packaging of their prepaid calling cards the  
15 amount of all applicable surcharges, fees, or taxes and/or by stating that all applicable surcharges,  
16 fees, and taxes are subject to change without prior notice.

17 F. Violating Business and Professions Code section 17538.9, subdivision  
18 (b)(3)(A), by failing to clearly and conspicuously disclose in a prominent area immediately  
19 proximate to the point of sale of their prepaid calling services the amount of all applicable  
20 surcharges, fees, or taxes and/or by stating that all applicable surcharges, fees, and taxes are  
21 subject to change without prior notice.

22 G. Violating Business and Professions Code section 17538.9, subdivision  
23 (b)(6)(C), by failing to provide a toll-free customer service number that allows customers to  
24 obtain complete and accurate information on the amount and type of all applicable rates,  
25 surcharges, fees, and taxes.

26 H. Violating Business and Professions Code section 17538.9, subdivision  
27 (b)(11), by imposing fees, surcharges, and other levies on consumers that are not disclosed as  
28



1 required by Business and Professions Code section 17538.9 and/or imposing fees, surcharges,  
2 and other levies on consumers that exceed the amounts disclosed by Defendants.

3 I. Violating Civil Code section 1770, subdivision (a)(9), by advertising their  
4 telephone prepaid debit cards and prepaid calling services with the intent not to sell them as  
5 advertised by, for example (1) touting low per-minute rates to various destinations while at the  
6 same time purporting to modify those promises by stating in fine print that all such rates are  
7 subject to change without notice, and (2) imposing various undisclosed surcharges, fees, and  
8 other levies on consumers.

9 J. Violating Civil Code section 1770, subdivision (a)(5), by overstating the  
10 quantity of calling time available on a \$5 or \$10 prepaid calling card.

11 K. Violating Business and Professions Code section 17500 as set forth in  
12 Paragraph 17 below.

13  
14 **SECOND CAUSE OF ACTION**  
15 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500**  
16 **(UNTRUE OR MISLEADING STATEMENTS)**  
(Brought by the Attorney General on behalf of The People of the State of California)

17 16. Plaintiff, the People of the State of California, restates and incorporates  
18 paragraphs 1 through 15 as though fully set forth herein.

19 17. Defendants, and each of them, acting directly or indirectly with intent to induce  
20 members of the public to purchase Defendants' telephone prepaid debit cards and prepaid  
21 calling services, in violation of Business and Professions Code section 17500, have disseminated  
22 and are still disseminating untrue or misleading statements by:

23 A. Overstating the number of minutes of calling time to various destinations  
24 that can be obtained by purchasing Defendants' prepaid calling cards or prepaid calling services;

25 B. Representing that Defendants would charge consumers the rates, fees, and  
26 surcharges disclosed in Defendants' advertising and in the small type on Defendants' prepaid  
27 calling cards and packaging, when in fact Defendants impose substantial, undisclosed surcharges  
28

1 and fees that rapidly consume the value of Defendants' prepaid calling cards.

2 18. Defendants knew, or by the exercise of reasonable care should have known,  
3 at the time of making these statements, or causing these statements to be made, that the  
4 statements set forth in paragraph 17 were untrue or misleading.

5  
6 **THIRD CAUSE OF ACTION**  
7 **VIOLATION OF PUBLIC UTILITIES CODE SECTIONS 885, 886, AND 1013**  
8 (Brought by the California Public Utilities Commission on behalf of the  
9 People of the State of California)

10 19. Plaintiff, People of the State of California, hereby restates and incorporates  
11 paragraphs 1 through 18 as though set forth fully herein.

12 20. Public Utilities Code section 885(a) requires all entities providing the services of  
13 telephone prepaid debit cards in California to register with the California Public Utilities  
14 Commission ("Commission") under rules and standards established in accord with Public  
15 Utilities Code section 1013, unless they have already received a certificate of public convenience  
16 and necessity to provide telephone service.

17 21. In Decision No. 97-06-107 (issued June 25, 1997), the Commission adopted  
18 certain minimum requirements for registered entities, as required by Public Utilities Code section  
19 1013, subdivisions (c), (d), and (e). The Commission requires potential registrants to provide it  
20 with the name and address of their registered agent(s), if any, the name, address, and title of each  
21 officer and director, and a description of the telecommunications services they offer or intend to  
22 offer. The Commission further requires potential registrants to verify their financial viability,  
23 and to verify that neither they nor their officers, directors, or owners have a prior history of  
24 committing fraud or deceit on the public, or are currently being investigated for such misconduct.

25 22. Public Utilities Code section 1013, subdivision (b), requires entities subject to the  
26 registration requirement to maintain an active registration with the Commission at all times, and  
27 to comply with all rules and regulations established by the Commission for registered entities.

28 23. Public Utilities Code section 886 prohibits any entity that is required to register,



1 but has failed to do so, or has been denied registration, from offering the services of telephone  
2 prepaid debit cards in California.

3 24. Defendants, and each of them, have violated Public Utilities Code sections 885(a),  
4 886, and 1013(b), and evaded regulatory oversight, and are continuing to do so, by offering the  
5 services of telephone prepaid debit cards without being approved to do so by the Commission.  
6

7 **WHEREFORE, the People pray for judgment as follows:**

8 1. That pursuant to Business and Professions Code sections 17203, Defendants, their  
9 agents, employees, officers, representatives, successors, partners, assigns, and those acting in  
10 concert or participating with Defendants be permanently enjoined from engaging in unfair  
11 competition as defined in Business and Professions Code section 17200, including, but not  
12 limited to, the wrongful acts and practices alleged in this complaint.

13 2. That pursuant to Business and Professions Code section 17535, Defendants, their  
14 agents, employees, officers, representatives, successors, partners, assigns, and those acting in  
15 concert or participating with Defendants be permanently enjoined from making any untrue or  
16 misleading statements in violation of Business and Professions Code section 17500, including,  
17 but not limited to, the untrue or misleading statements alleged in this complaint.

18 3. That pursuant to Business and Professions Code section 17206, the Court assess a  
19 civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation  
20 of Business and Professions Code section 17200, as proved at trial.

21 4. That pursuant to Business and Professions Code section 17536, the Court assess a  
22 civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation  
23 of Business and Professions Code section 17500, as proved at trial.

24 5. That Defendants be ordered to make restitution of any money or other property  
25 that may have been acquired by their violations of Business and Professions Code sections 17200  
26 and 17500.

27 6. That pursuant to Public Utilities Code section 2102, Defendants, their successors,  
28

1 agents, representatives, employees and all persons who act in concert with Defendants be  
2 permanently enjoined from violating Public Utilities Code sections 885, 886, and 1013.

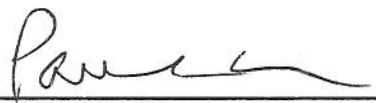
3 7. That pursuant to Public Utilities Code sections 2107 and 2108, the Court assess a  
4 civil penalty of \$500 for each violation of Public Utilities Code sections 885, 886, and 1013, and  
5 a civil penalty of \$500 for each day the violation continued, as proved at trial.

6 8. That the People recover their costs of suit.

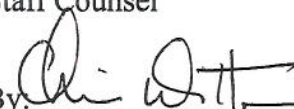
7 9. That the Court order such other and further relief that the Court deems just and  
8 proper.

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10 DATED: April 12, 2007

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